

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014030356

ORDER PARTIALLY GRANTING
MOTION TO DISMISS AS TO ISSUES
THREE (A) AND (B) AND ISSUE SIX
(B)

Student filed a request for due process (complaint) naming Oakland Unified School District (District) on March 6, 2014. District filed a motion to dismiss certain claims in the complaint on March 24, 2014. OAH did not receive a reply to District's motion.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (Section 504), Section 1983 of Title 42 United States Code (Section 1983), No Child Left Behind and related state and federal statutes and regulations. Similarly, OAH has no jurisdiction to entertain claims seeking review of administrative orders issued by the California Department of Education (CDE).

The statute of limitations for due process complaints in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. §

1415(f)(3)(C).) However, Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

DISCUSSION

District's motion seeks the dismissal of Student's Issues 3 (a) and (b) and Issue 6(b), as well as all claims that arose outside of the applicable statute of limitations. This order is limited to those issues.

The complaint acknowledges in prefatory language that OAH has no jurisdiction to hear non-IDEA claims. On page five, Student asserts that he is seeking to make claims outside of the statute of limitations under the statutory exceptions.

Issue 3 (a) alleges that District discriminated against Student in the 2012-2013 and 2013-2014 school years by segregating him at school. Issue 3(b) alleges that during the same time frame District discriminated against Student by failing to transport Student to class holiday parties. Although the complaint does not identify under which statutory scheme these discrimination claims are made, neither do either of these issues identify facts that would place the issue within a claim arising under the IDEA. Accordingly, 3(a) and (b) do not raise claims under IDEA and because OAH has no jurisdiction to entertain outright claims of discrimination, Issues 3(a) and 3(b) are dismissed.

Issue 6(b) asserts that District backdated a referral to an independent educational assessment (IEE) that was ordered by the CDE under a settlement agreement following a compliance complaint filed on Student's behalf. As a result, Student was allegedly prevented from receiving the IEE. Student asserts that the CDE determined that District complied with its order, and as a result of that determination District prevented Student from receiving the IEE when it failed to proceed with the IEE. Student also asserts that District relied on 2009 assessments for high school placement through 2013, and therefore did not design an appropriate educational plan for Student. The issue of whether District properly complied with CDE's order or the ensuing settlement agreement and what impact that compliance or non-compliance had on Student is not within OAH's jurisdiction. As such, any claim that District failed to comply with the CDE order is dismissed. However, Issue 6(b) raises a claim under the IDEA based on Student's assertion that District did not offer Student an appropriate educational plan from 2009 through 2013 because it relied on 2009 assessments for placement through 2013. Issue 6(b) will be limited to that issue.

Finally, the issue of the applicability of the statute of limitations and its exceptions to Student's claims requires findings of fact by the hearing judge. OAH does not grant motions for summary judgment. The parties are entitled to make a factual record at hearing.

Accordingly, District's motion to dismiss claims falling outside of the two year statute of limitations is denied without prejudice to District's right to raise the statute of limitations as a defense during hearing.

ORDER

1. District's motion to dismiss Issues 3(a) and 3(b) is granted.
2. District's motion to dismiss Issue 6(b) is partially granted. All claims asserting that District failed to comply with administrative orders issued by the CDE or that CDE incorrectly confirmed District compliance with such orders are dismissed. Issue 6(b) shall proceed to hearing on the claim that District failed to assess Student after 2009 and therefore offered him an inappropriate placement through high school, thereby denying him a FAPE.
3. District's motion to dismiss claims falling outside of the applicable statute of limitations is denied without prejudice to District's right to raise the statute of limitations as a defense to Student's claims at hearing.
4. All dates previously set are confirmed.

DATE: April 2, 2014

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings